

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

02 OCT 22 AM 11:23

ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

In the Matter of

SASNAK MANAGEMENT CORPORATION
d/b/a PARKE EAST TOWN HOUSES
Wichita, Kansas

Respondent

) Docket No. TSCA-07-2003-0009
)
)
)
)
)
)
)

COMPLAINT AND NOTICE OF
OPPORTUNITY FOR HEARING
UNDER SECTION 16(a) OF
THE TOXIC SUBSTANCES
CONTROL ACT

COMPLAINT

Preliminary Statement

This is an administrative action for the assessment of civil penalties instituted pursuant to Section 16(a) of the Toxic Substances Control Act, (hereinafter "TSCA"), 15 U.S.C. § 2615(a), in accordance with the United States Environmental Protection Agency's Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, found at 40 C.F.R. Part 22, a copy of which is enclosed herewith.

This Complaint and Notice of Opportunity for a Hearing ("Complaint") serves as notice that the United States Environmental Protection Agency (hereinafter "EPA") has reason to believe that Respondent has violated Section 409 of TSCA, 15 U.S.C. § 2689, by failing to comply with the regulatory requirements of 40 C.F.R. Part 745, Subpart F, Disclosure of Known Lead-Based Paint and/or Lead-Based Paint Hazards Upon Sale or Lease of Residential Property ("Disclosure Rule"), which was promulgated pursuant to Section 1018 of the Residential Lead-Based Paint Hazard Reduction Act of 1992, ("Title X"), 42 U.S.C. § 4851 *et seq.*

Congress enacted Title X to protect America's children from the dangers of lead-based paint. Congress found that lead poisoning afflicts millions of American children under the age of 6, and that millions of American homes pose a danger to children due to the hazards presented by lead-based paint. Section 1018 of Title X, 42 U.S.C. § 4852d, contains provisions governing the disclosure of information concerning lead-based paint upon the sale or lease of "target housing", which Title X defines as housing constructed prior to 1978. The Disclosure Rule requires that before a purchaser or lessee is obligated under any contract to purchase or lease target housing, sellers or lessors, and their agents, are required to disclose to the purchaser or lessee certain information regarding the possible or actual presence of lead-based paint and/or lead-based paint hazards in the target housing. Additionally, purchasers must be offered an opportunity to conduct a risk assessment or inspection for the presence of lead-based paint and/or lead-based paint hazards.

The Complainant, by delegation from the Administrator of the EPA, and the Regional Administrator, EPA, Region 7, is the Director, Air, RCRA, and Toxics Division, EPA, Region 7. The Respondent is Sasnak Management Corporation, doing business as Parke East Town Houses ("Respondent"), 1877 N. Rock Road, Wichita, Kansas 67205

General Allegations

1. Sasnak Management Corporation ("Respondent") is a Kansas corporation.
2. Respondent does business as Parke East Town Houses ("Parke East").
3. For all periods of time relevant to the violation alleged in the Complaint, Parke East Associates ("Owner") owned a residential apartment complex located at 1000 S. Woodlawn, Wichita, Kansas (the "Property").
4. The Property was constructed prior to 1978.
5. The Property is "target housing" as defined by 40 C.F.R. § 745.103.
6. Prior to the violation alleged in the Complaint, Respondent had entered into a contract or agreement with the Owner, for the purpose of leasing the Property.
7. On or about May 7, 1999, Respondent entered into a rental agreement (the "Contract") with Twila D. Warren and Tahlisha Franks for the lease of the Property, Apartment # 109, for residential use.
8. As a result of the Contract, the Owner became a "lessor", Respondent became an "agent", and Twila D. Warren and Tahlisha Franks became "lessees", as those terms are defined by 40 C.F.R. § 745.103
9. Subsequent to the Contract, Twila D. Warren and Tahlisha Franks moved into Apartment 109 along with two children ages one and 14 years of age.

Count I

Failure to Provide Lead Hazard Information Pamphlet

The facts stated in Paragraphs 1 through 9 above are herein restated and incorporated.

10. Pursuant to 40 C.F.R. § 745.107(a)(1), before the lessee is obligated under any contract to lease target housing, the lessor of target housing must provide the lessee with an EPA-approved lead hazard information pamphlet.

11. Pursuant to 40 C.F.R. § 745.115(a)(2), an agent must ensure that lessors have complied with 40 C.F.R. § 745.107(a)(1), or must personally ensure compliance with the same.
12. Both the Owner and Respondent failed to provide an EPA-approved lead hazard information pamphlet to Twila D. Warren and Tahlisha Franks prior to being obligated under the Contract.
13. Respondent's failure to ensure that an EPA-approved lead hazard information pamphlet was provided to Twila D. Warren and Tahlisha Franks prior to being obligated under the Contract is a violation of 40 C.F.R. §§ 745.107(a)(1) and 745.115(a)(2), and Section 409 of TSCA.
14. Pursuant to Section 16(a)(1) of TSCA, 15 U.S.C. § 2615(a)(1), and based on the allegations contained above, it is proposed that a civil penalty of Eleven Thousand Dollars (\$11,000.00) be assessed against Respondent for its failure to comply with the requirements of 40 C.F.R. §§ 745.107(a)(1) and 745.115(a)(2).

Relief

TSCA § 16(a)(1), 15 U.S.C. § 2615(a)(1), provides that any person who violates Section 409 of TSCA shall be liable to the United States for a civil penalty in an amount not to exceed \$25,000 for each such violation. However, this maximum penalty amount is limited by Section 1018(b)(5) of the Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 U.S.C. § 4852d(b)(5), which makes violations of the Disclosure Rule enforceable under TSCA § 409 and limits penalties to not more than \$10,000 per violation. Pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461 note, 101 Stat. 890, as amended by the Debt Collection Act of 1996, 31 U.S.C. § 3701 note, 110 Stat. 1321, EPA issued a final rule adjusting this \$10,000 figure upward by 10% to \$11,000 for violations that occur after July 28, 1997. 62 Fed. Reg. 35,037 (June 27, 1997); 40 C.F.R. Part 19.

The penalty proposed in Paragraph 14 above, \$11,000, is based upon the facts alleged in this Complaint and upon those factors which the Complainant must consider pursuant to Section 16(a)(2)(B) of TSCA, 15 U.S.C. § 2615(a)(2)(B), including the nature, circumstances, extent and gravity of the violations, and with respect to the Respondent, ability to pay, effect on ability to continue to do business, any history of prior such violations, degree of culpability, and other such matters as justice may require in accordance with EPA's Section 1018 - Disclosure Rule Enforcement Response Policy, dated February 2000, a copy of which is enclosed herewith. This policy provides a rational, consistent and equitable calculation methodology for applying the statutory penalty factors enumerated above to particular cases.

The proposed penalty as set forth in this Complaint is based on the best information available to EPA at the time that the Complaint was issued. The penalty may be adjusted if the Respondent establishes bonafide issues of ability to pay, or other defenses relevant to the appropriate amount of the proposed penalty. A summary of the proposed penalty is contained in the enclosed Civil Penalty Assessment Worksheets attached hereto and incorporated herein by reference.

If Respondent does not contest the findings and assessments set forth above, payment of the total penalty - \$11,000 - may be made by certified or cashier's check payable to the "Treasurer, United States of America," and remitted to:

Mellon Bank
EPA - Region 7
Regional Hearing Clerk
P.O. Box 360748M
Pittsburgh, Pennsylvania 15251

NOTICE OF OPPORTUNITY TO REQUEST A HEARING

Answer and Request for Hearing

In accordance with 5 U.S.C. § 554, Respondent has the right to request a hearing to contest any material fact contained in this Complaint above or to contest the appropriateness of the proposed penalty set forth herein. Such a hearing will be held and conducted in accordance with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits, 40 C.F.R. Part 22, a copy of which is enclosed herewith.

To avoid being found in default, which constitutes an admission of all facts alleged in this Complaint and a waiver of the right to hearing, Respondent must file a written answer and request for hearing within thirty (30) days of service of this Complaint and Notice of Opportunity for Hearing. Said answer shall clearly and directly admit, deny or explain each of the factual allegations contained in this Complaint with regard to which Respondent has any knowledge, or shall clearly state that Respondent has no knowledge as to particular factual allegations in this Complaint. The answer shall also state: (a) the circumstances or arguments which are alleged to constitute the grounds of any defense; (b) the facts which Respondent disputes; (c) the basis for opposing any proposed relief; and (d) whether a hearing is requested.

The denial of any material fact or the raising of any affirmative defense shall be construed as a request for hearing. Failure to deny or explain any factual allegation contained in the Complaint constitutes an admission of the allegation. Said answer shall be filed with the following:

Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 7
901 N. 5th Street
Kansas City, Kansas 66101

A copy of the answer and request for hearing and copies of any subsequent documents filed in this action should be sent to Henry F. Rompage at the address indicated below.

If Respondent fails to file a written answer and request for a hearing within thirty (30) days of service of this Complaint and Notice of Opportunity for Hearing, such failure will constitute a binding admission of all allegations made in this Complaint and a waiver of Respondent's right to a hearing under TSCA. A Default Order may thereafter be issued by the Regional Judicial Officer and the civil penalty proposed herein shall become due and payable without further proceedings.

Informal Settlement Conference

Whether or not Respondent requests a hearing, an informal conference may be requested in order to discuss the facts of this case, the proposed penalty, and the possibility of settlement. To request a settlement conference, please contact:

Henry F. Rompage
Senior Assistant Regional Counsel
United States Environmental Protection Agency, Region 7
901 N. 5th Street
Kansas City, Kansas 66101
Telephone (913) 551-7280
Facsimile (913) 551-7925

Please note that a request for an informal settlement conference does not extend the thirty (30) day period during which a written answer and request for a hearing must be submitted.

EPA encourages all parties against whom a civil penalty is proposed to pursue the possibilities of settlement as a result of informal conference. Any settlement which may be reached as a result of such a conference shall be embodied in a written Consent Agreement and Final Order issued by the Regional Judicial Officer, EPA Region 7. The issuance of such a Consent Agreement and Final Order shall constitute a waiver of Respondent's right to request a hearing on any matter stipulated therein.

If Respondent has neither achieved a settlement by informal conference nor filed an answer within the thirty (30) day time period allowed by this Notice, the penalty proposed above may be assessed by the entry of a Default Order.

Date 10/21/02

William A. Spratlin
William A. Spratlin,
Director
Air, RCRA, and Toxics Division

Henry F. Rompage
Henry F. Rompage, Senior Assistant Regional Counsel
Office of Regional Counsel

Enclosures

CIVIL PENALTY ASSESSMENT WORKSHEET

**IN THE MATTER OF: SASNAK MANAGEMENT CORPORATION
d/b/a PARKE EAST TOWN HOUSES**

Count I (Major Extent, Level 1)

(1) Gravity-Based Penalty (GBP) from Matrix	\$	\$11,000
(2) Adjustment Factors		
a. Ability to Pay/Ability to Continue in Business	%	0
Adjusted Penalty (if no adjustment, skip to the next line)		
b. History of Prior Violations	%	0
Adjusted Penalty (if no adjustment, skip to the next line)		
c. Degree of Culpability	%	
Adjusted Penalty (if no adjustment, skip to the next line)		
(3) Other Factors as Justice May Require		
a. No Known Risk of Exposure	%	0
Adjusted Penalty (if no adjustment, skip to the next line)		
b. Attitude:	%	0
Adjusted Penalty (if no adjustment, skip to the next line)		
c. SEPs:	%	0
Adjusted Penalty (if no adjustment, skip to the next line)		
d. Voluntary Disclosure	%	0
Adjusted Penalty (if no adjustment, skip to the next line)		
e. Size of Business:	%	0
Adjusted Penalty (if no adjustment, skip to the next line)		
f. Adjustment for Small Independent Owner/Lessor:	%	0
Adjusted Penalty (if no adjustment, skip to the next line)		
(4) Final Adjusted Penalty (If no adjustments were made, enter penalty from Line 1)		\$11,000
TOTAL PROPOSED PENALTY		\$11,000

NOTICE OF SECURITIES AND EXCHANGE COMMISSION REGISTRANTS' DUTY TO DISCLOSE ENVIRONMENTAL LEGAL PROCEEDINGS

Securities and Exchange Commission regulations require companies registered with the SEC (e.g., publicly traded companies) to disclose, on at least a quarterly basis, the existence of certain administrative or judicial proceedings taken against them arising under Federal, State or local provisions that have the primary purpose of protecting the environment. Instruction 5 to Item 103 of the SEC's Regulation S-K (17 CFR 229.103) requires disclosure of these environmental legal proceedings. For those SEC registrants that use the SEC's "small business issuer" reporting system, Instructions 1-4 to Item 103 of the SEC's Regulation S-B (17 CFR 228.103) requires disclosure of these environmental legal proceedings.

If you are an SEC registrant, you have a duty to disclose the existence of pending or known to be contemplated environmental legal proceedings that meet any of the following criteria (17 CFR 229.103(5)(A)-(C)):

- A. Such proceeding is material to the business or financial condition of the registrant;
- B. Such proceeding involves primarily a claim for damages, or involves potential monetary sanctions, capital expenditures, deferred charges or charges to income and the amount involved, exclusive of interest and costs, exceeds 10 percent of the current assets of the registrant and its subsidiaries on a consolidated basis; or
- C. A governmental authority is a party to such proceeding and such proceeding involves potential monetary sanctions, unless the registrant reasonably believes that such proceeding will result in no monetary sanctions, or in monetary sanctions, exclusive of interest and costs, of less than \$100,000; provided, however, that such proceedings which are similar in nature may be grouped and described generically.

Specific information regarding the environmental legal proceedings that must be disclosed is set forth in Item 103 of Regulation S-K or, for registrants using the "small business issuer" reporting system, Item 103(a)-(b) of Regulation S-B. If disclosure is required, it must briefly describe the proceeding, "including the name of the court or agency in which the proceedings are pending, the date instituted, the principal parties thereto, a description of the factual basis alleged to underlie the proceedings and the relief sought."

You have been identified as a party to an environmental legal proceeding to which the United States government is, or was, a party. If you are an SEC registrant, this environmental legal proceeding may trigger, or may already have triggered, the disclosure obligation under the SEC regulations described above.

This notice is being provided to inform you of SEC registrants' duty to disclose any relevant environmental legal proceedings to the SEC. This notice does not create, modify or interpret any existing legal obligations, it is not intended to be an exhaustive description of the legally applicable requirements and it is not a substitute for regulations published in the Code of Federal Regulations. This notice has been issued to you for information purposes only. No determination of the applicability of this reporting requirement to your company has been made by any governmental entity. You should seek competent counsel in determining the applicability of these and other SEC requirements to the environmental legal proceeding at issue, as well as any other proceedings known to be contemplated by governmental authorities.

If you have any questions about the SEC's environmental disclosure requirements, please contact the Office of Chief Counsel in the SEC's Division of Corporation Finance. The phone number is (202) 942-2900.

CERTIFICATE OF SERVICE

I certify that on the date noted below I hand delivered the original and one true and correct copy of the foregoing Complaint and Notice of Opportunity for Hearing to the Regional Hearing Clerk, United States Environmental Protection Agency, Region 7, 901 N. 5th Street, Kansas City, Kansas 66101.

I further certify that on the date noted below I sent by certified mail, return receipt requested, Article Number: 7001 0320 0002 5013 6749, a true and correct copy of the signed original Complaint and Notice of Opportunity for Hearing; the Civil Penalty Assessment Worksheets; the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, 40 C.F.R. Part 22; and the Section 1018 - Disclosure Rule Enforcement Response Policy to the following:

Darrell Rolph
Registered Agent for
Sasnak Management Corporation
2877 North Rock Road
Wichita, KS 67206.

OCT 22 2002

Date

Signature

Printed Name

Betty F. ROBERTSON

U.S. Postal Service	
CERTIFIED MAIL RECEIPT	
(Domestic Mail Only; No Insurance Coverage Provided)	
OFFICIAL USE	
Postage \$	OCT 22 2002 Postage Here
Certified Fee	
Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement)	
Total Postage	
Sent To	
Street, Apt. or PO Box No.	
City, State, Zip	
Darrell Rolph, Reg Agent for Sasnak Management Corporation 2877 North Rock Road Wichita, KS 67206	

PS Form 3800, January 2001 See Reverse for Instructions